

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3107 OF 2004

Tomco Kamgar Union.

...Petitioner.

Versus

Hindustan Lever Ltd. & Ors.

...Respondents.

.....

Mr. A.D. Shetty with Mr.Thamnesh Shetty and Ms. Rita Joshi for the
Petitioner.

Mr. K.M. Naik with Mr.Sujit Satlkar for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

20th January 2005.

P.C.:

Rule. Learned Counsel appearing on behalf of Respondent
Nos.1 to 5 and 8 waive service. By consent taken up for hearing and

final disposal.

2. This petition under Article 226 of the Constitution arises out of an order dated 6th July 2004 passed by the Industrial Court at Mumbai allowing an application filed by the management to dispose of a complaint of unfair labour practice in view of an alleged settlement dated 21st September 2002. The Petitioner filed a complaint under Items 3, 9 and 10 of the Fourth Schedule to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 on 30th March 1998. In the complaint, besides seeking a declaration in regard to the commission of an unfair labour practice by the employer, the Union sought certain specific reliefs : (i) That the employer be directed to provide to the employees all types of leave in accordance with existing practice, usage and custom, more specifically, 15 days' leave with wages, 8 days' bonus leave taking into account the days on which the employees have physically worked and the days on which they were paid wages including leave with wages and paid holidays; (ii) The employer be

directed to provide to employees a leave book in accordance with the Factories Act, 1948 and the rules framed thereunder; (iii) The employer be directed to continue the practice of allowing employees to enjoy $\frac{1}{2}$ day P.L. as and when found necessary; (iv) The employer be directed to pay overtime wages at the rate of twice the normal rates to all the employees on duty in 'G' and 'V' shifts on 27th January 1998 for the half day work as if employees worked overtime on that day; (v) A medically qualified person be appointed as a Medical Officer of the Company for the benefit of the employees; (vi) Allotment of vacant residential flats be made to employees on first come first served basis; and (vii) The employer be restrained from compelling any employee to accept voluntary retirement. These are some of the salient reliefs which were sought in the complaint, amongst others.

3. In the complaint, an application was filed on 5th August 2003 by the First Respondent seeking to contend that an agreement was entered into on 21st September 2002 between the employer and

the complainant Union which was signed by Shri Raja Kamarajah the then General Secretary and one Shri R.Rajendran, who was the Vice President of the Union in pursuance of a resolution of the General Body dated 30th March 2002 authorising the members of the Committee to act, appear, plead and settle any dispute before any authority. The company set up the case that under the agreement dated 21st September 2002 which was signed on its behalf by two of its officers, the Union had agreed to withdraw unconditionally various cases filed against the management and that certain complaints had been withdrawn on the basis of the said agreement.

4. A reply was filed by the Petitioner seriously contesting the averment that the dispute had been settled in terms of alleged agreement dated 21st September 2004. The Union in its reply stated that Raja Kamarajah and Rajendran were never authorised to sign a settlement or an agreement on its behalf and that the Managing Committee had not authorised these two individuals to discuss or settle any dispute involved and various other Court matters. It was

sought to be averred that neither of the two members were members of the Union on 21st September 2002. It was alleged that Mr.Rajendran was transferred to the Research Centre of the Employer at Andheri in 1999 and was not a member of the Complainant Union since he was working at Andheri. The other employee, it is stated, was a chronic alcoholic who did not attend the Company for the previous four years and in fact, he had not even worked for 10 days continuously during the previous four years. It was alleged that the management on one pretext or the other had not taken any action against Kamarajah and by doling out some favour to these employees, fabricated documents to deprive the workmen of justice which ought to have been done in the course of the adjudication of the complaint. According to the Union, no General Body Meeting took place on 30th March 2002 and that the so-called resolution of that date was also a fabricated document.

5. On this state of the record, the Industrial Court dealt with the application without recording any evidence. On the record of the

Industrial Court, the Union submitted that on 21st October 2002, a notice to show cause was issued to Kamarajah and to Rajendran, the two office bearers who are alleged to have entered into the settlement. The notice drew their attention to the fact that on 11th October 2002, a Special General meeting of the Union was held at which, the settlement was rejected and a decision was taken to expel them for a period of six years from the membership of the Union. On 19th October 2002 both the workmen came to be expelled from the membership of the Union. The Industrial Court held that the notice to show cause as to why these employees should not be expelled was issued for the first time on 21st October 2002 after the Special General meeting of 11th October 2002 at which the settlement which was entered into purportedly on 21st September 2002 was rejected. The Court noted that after the settlement, certain applications had been submitted by the office bearers of the Union for the withdrawal of cases pending before certain Courts and that the present complaint is also included in the list of complaints that were required to be withdrawn. At the relevant time, according to the Industrial Court, the

Union had not objected to the withdrawal of those complaints. The Court held that in view of the provisions of clause 6 of the settlement, the complaint before it will have to be disposed of particularly since by the resolution dated 30th March 2002, the Union had authorised the two office bearers to enter into settlements with the management.

6. Counsel appearing on behalf of the Petitioner submitted that the Industrial Court is seriously in error in allowing such an application. Counsel submitted that the gravamen of the complaint covered a whole range of issues relating to the conditions of service of the workmen of the First Respondent. A bare look at the alleged settlement dated 21st September 2002 would show that what was agreed during the course thereof, was the payment of certain individual benefits to a handful of workmen. Counsel submitted that it is inconceivable that cases relating to the service conditions of the general body workmen would be withdrawn on the basis of a fraudulent settlement by which benefits were to be given to a handful of workmen. The Union, it is submitted, has promptly taken steps to

convene a meeting of the general body at which the settlement was rejected and after which both the workmen who had purportedly entered into the agreement were expelled from membership. Counsel further submitted that the alleged clause in the resolution dated 30th March 2002 was that certain specified members of the Union were authorised to act, appear and settle any grievances/disputes before the management, statutory authority and/or any other authority and the General Secretary/President were, in particular, authorised singly or jointly to sign any document on behalf of the Union at the Annual General Body Meeting held on 30th March 2002. Counsel submitted that this resolution did not confer any such authority on the two workmen who entered into a settlement to withdraw all the cases pending before any Court. Counsel submitted that in the original copy of the resolution the names of the proposer and seconder bore no signatures at all. It was urged before the Court that in view of the law laid down by the Supreme Court in **Brooke Bond India Ltd. vs. Workmen**, 1981 II LLJ 184, it is settled that where the authority of the office bearers of a Union to enter into a Memorandum of settlement is

challenged, the authority or authorisation has to be established as a fact and it is not enough if the employer merely points out and relies upon the fact that the Memorandum of settlement was signed by one or more of the office-bearers of the union. In **Workmen of Delhi Cloth and General Mills Ltd.** 1972 1 LLJ 99, the Supreme Court emphasised that the provisions contained in Section 2(p) read with Section 18(1) of the Act and the Rules framed under the Industrial Disputes Act, 1947 are mandatory and the provisions contained in Rule 58 of the Industrial Dispute Central Rules are required to be complied with. There are corresponding provisions in the Bombay Rules which it was urged, must be complied with and even the form of settlement is statutorily provided for under the Rules. On the other hand, Counsel appearing on behalf of the First Respondent supported the judgment of the Industrial Court.

7. The facts of the present case would demonstrate that the authority of the office bearers to enter into the alleged settlement dated 21st September 2002 and to agree to a withdrawal of cases is

seriously in question. The complaint which was filed by the Petitioner dealt with the grievances of the workmen in regard to a host of service conditions including leave, allotment of quarters, the Scheme for Voluntary Retirement and other benefits. The complaint is pending since 30th March 1998. The alleged settlement was purported to have been entered into on 21st September 2002. The settlement is stated to have been signed by two Personnel Managers of the First Respondent and by the General Secretary and Vice President of the Union. Ex-facie, the settlement shows that certain payments would be made to the Vice President and to the General Secretary representing the Union in consideration of which two complaints of unfair labour practices would have to be withdrawn. Clause 1 of the settlement essentially dealt with the service conditions of these two office bearers of the Union. Clause (1) inter alia is in the following terms :

“It is agreed that only the following payments will be made after the withdrawal of the complaints mentioned above.

Difference in subsistence allowance for the first 6 months

which amount to Rs.3837/- to Mr.Rajendran and Rs.6631/- to Mr.Kamarajah. PIL will be credited to their account, of 92 days for Rajendran and 180 days for Kamarajah. Sick leave of 110 days each will be credited to Mr.Rajendran and Mr. Raja Kamarajah. Superannuation amount of Rs.38,400/- (Rs.3840/- per year x 10 years) will be credited to superannuation accounts of Mr.Rajendran and Mr. Raja Kamarajah. It is agreed and understood that the Company will not be liable to pay and the TOMCO Kamgar union will not claim any interest in respect of the above payments. It is further agreed that the above named workmen or the Union will not make any other claims whatsoever apart from what is stated above.”

Clause (2) thereafter provides for the payment of duty allowance to eight workmen in consideration whereof certain complaints instituted by the Union would be withdrawn. Clause (2) is in the following terms :

“2. It is agreed between the parties that since the Company has already paid Duty allowance upto May 2001 and agrees that it will continue to pay duty allowance from June 2001 onwards on regular monthly basis to M/s.Govindan, Khan, Narayan, Kamarajah, KV Sedhu, S.Perumal, KR Chogle and D. Shinde. The Union will withdraw the following cases. Misc. Appln (ULP-11/99), ULP 838/99, IDA 726/99. It is agreed between the parties that the payment of the duty allowance will be made after the withdrawal of the said cases.”

Clause (3) thereafter provided that several complaints which had been instituted by the Union would be withdrawn unconditionally “as a gesture of goodwill and to maintain better industrial relations with the Company in the future”. After this settlement was entered into on 21st September 2002, a Special General meeting was convened on 11th October 2002 at which the settlement was rejected. A show cause

notice was issued to the two office bearers on 21st October 2002 and they were expelled from the membership of the Union on 19th November 2002. In this background, it is only to be expected that before allowing the application of the employer for the disposal of the complaint in terms of clause (6) of the settlement, it would be necessary for the Industrial Court to determine as to whether such a settlement was in fact validly entered into particularly since the authority of the two office bearers to enter into the settlement was seriously questioned. The contention of the Union was that the office bearers were not authorised and that they had to agreed to the withdrawal of several complaints relating to the conditions of services of the members of the Union, in consideration of the grant of certain individual benefits to them. . In **Brooke Bond India Ltd.** (supra), a Bench of three Learned Judges of the Supreme Court held that where there is a settlement between the employer and one or more office bearers of the Union, and the authority of the office bearers who signed the Memorandum of settlement to enter into the settlement is challenged, the authority or authorisation of the office bearers who

signed the Memorandum of settlement has to be established as a fact and it is not enough if the employer merely points out and relies upon the fact that the Memorandum of settlement was signed by one or more of the office bearers of the union. In **Workmen of Delhi Cloth Mills** (supra), the Supreme Court emphasised the importance of compliance of the statutory provisions of the Industrial Disputes Act, 1947 and of Rule 58 in relation to the manner in which an industrial settlement should be entered into. In **Herbertsons vs. Workmen**, AIR 1977 SC 322, the Supreme Court held that though ordinarily when a recognised Union negotiates with an employer, an individual workman does not come into the picture, there may be allegation of malafides, fraud or other acts which should then need to be investigated. This is one of those cases where there are allegations of mala fides and wrongful conduct by two office bearers of the Union, to the detriment of the general body of workmen. The Industrial Court should have proceeded with circumspection. In the present case, a statement has been placed before the Court showing that a number of complaints which were withdrawn in pursuance of the aforesaid settlement dated

21st September 2002, related to individual grievances of the concerned workmen. In my view, the Industrial Court ought not to have disposed of the proceedings before it on this state of the record without furnishing to the parties an opportunity of leading evidence in support of their respective cases. Serious allegations have been made before the Industrial Court in regard to the role and authority of the two members of the Union who are alleged to have entered into the settlement. The effect of the order of the Industrial Court is to effectively foreclose the recourse taken by the workmen for the redressal of their grievances in the complaint before the Court. This ought not to have been done in the manner in which was without a full consideration of the matter after evidence was adduced.

8. In the circumstances, it would be appropriate to set aside the order of the Industrial Court dated 6th July 2004 and to restore Complaint (ULP) No.355 of 1998 to the file of the Industrial Court. The Industrial Court shall proceed to dispose of the complaint after hearing the parties. The First Respondent would be at liberty to raise

all appropriate defences to the complaint including the alleged settlement of 21st September 2002. All the respective rights and contentions of the parties are kept open. The Industrial Court is requested to expedite the disposal of the complaint and should set down a time schedule for an early disposal. The petition is accordingly disposed of in these terms. No order as to costs.

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